

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

H.B. 1158  
May 27, 2022  
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40783-LM-185

Short Title: Beech Mountain/Tree Ordinances. (Local)

Sponsors: Representative Greene.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT AUTHORIZING THE TOWN OF BEECH MOUNTAIN TO ADOPT ORDINANCES  
3 REGULATING TREES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** The Charter of the Town of Beech Mountain, being Chapter 246 of the  
6 Session Laws of 1981, as amended, is amended by adding a new Article to read as follows:

7 "ARTICLE XI.

8 "MISCELLANEOUS.

9 "Part 1. Tree Ordinances.

10 "Sec. 11.1. Purpose. The Town may adopt tree ordinances as provided in this Part for the  
11 following purposes:

- 12 (1) To preserve the natural beauty of the Town.  
13 (2) To encourage better care of trees and vegetation within the Town, on both  
14 public and private property.  
15 (3) To develop a viable tree management program.  
16 (4) To promote cooperation between the public and private sectors to effectively  
17 manage urban forests.  
18 (5) To support and participate in the Tree City USA program.  
19 (6) To educate the public about the environmental importance and benefits of  
20 trees and their health.

21 "Sec. 11.2. Definitions. Unless the context clearly indicates otherwise, the following  
22 definitions shall apply in this Part:

- 23 (1) Clear cutting. – The cutting or removal of all trees within an area of 400 square  
24 feet or larger.  
25 (2) Injuring (a tree). – Any cutting, trimming, pruning, or other method of  
26 removing any live part of a live tree shall be considered injurious to the tree,  
27 and therefore a permit must be obtained as provided in this Part before  
28 performing any such act unless the act is exempted under Section 11.9 of this  
29 Part; provided, however, removing small branches under 1/2 inch in diameter  
30 shall not generally be considered injurious to the tree provided that such act  
31 does not remove a substantial portion of the canopy of the tree or otherwise  
32 result in a threat to the life or health of the tree.  
33 (3) Person. – Any individual, partnership, corporation, association, or entity.  
34 (4) Private property. – All property except "public property," as that term is  
35 defined in subdivision (5) of this section.  
36 (5) Public property. – Both of the following:



\* D R H 4 0 7 8 3 - L M - 1 8 5 \*

- 1           a.     Any property that the Town owns or leases, or any property over which  
2                 the Town has an easement.
- 3           b.     Any property over which the Town has been authorized to enforce the  
4                 provisions of this Part pursuant to an agreement between the property  
5                 owner or property easement holder, such as a highway right-of-way.
- 6           (6)    Temporary service route. – A route, other than the planned permanent  
7                 driveway or access route to a residential dwelling, that is created and used  
8                 during the construction process.
- 9           (7)    Tree. – The term means one or more trees.

10        "Sec. 11.3. Tree Board. (a) Establishment. The Town Council may establish a Tree Board  
11        which shall assist the Town Manager, or his or her designee, in the (i) creation, updating,  
12        monitoring, and management of the Town's tree ordinances and regulations, (ii) preparation of  
13        an annual tree replacement, planting, and maintenance program, and (iii) discussion and  
14        resolution of all other issues related to the management and care of the Town's forest. The Board  
15        shall consist of five members who shall be appointed by the Council. The Town Manager may  
16        designate employees of the Town to serve as ex officio members of the Board. Each member of  
17        the Board shall serve a term of three years which shall be staggered. Members of the Board shall  
18        be paid fifteen dollars (\$15.00) per month for attending meetings to conduct Board business,  
19        regardless of the number of meetings attended, and the compensation shall be paid on a quarterly  
20        basis. No compensation shall be paid for months in which the member did not attend any Board  
21        meetings. The Council may increase or decrease the compensation of Board members in its  
22        discretion.

23        (b) Meetings. – Members of the Board may attend up to one-half of the Board's regular  
24        meetings each calendar year by telephone or video-telephone. Members and Town employees  
25        attending meetings by telephone shall work to ensure that all parties are able to hear and  
26        communicate with each other. A member shall give notice to the Board secretary not less than  
27        24 hours prior to a Board meeting of his or her intent to attend by telephone. For purposes of  
28        achieving a quorum, a member attending a Board meeting by telephone shall not be considered  
29        present but may participate fully in the conduct of the meeting, including voting upon all matters  
30        before the Board. Minutes of Board meetings shall indicate the names of members who  
31        participated by telephone or video-telephone.

32        "Sec. 11.4. Permit Required. (a) It shall constitute a violation of this Part to perform or cause  
33        to be performed any of the acts listed in subsection (b) of this section without a written permit  
34        from the Town. This section applies to any tree located on public property regardless of the size  
35        of the tree. For trees located on private property, this subsection applies to any tree in excess of  
36        6 inches in diameter measured 4 feet above the ground at its highest point.

37        (b) Acts prohibited without a permit:

- 38           (1)    To mutilate, injure, remove, or relocate any live tree located within the Town  
39                 or injure or misuse any structure or device placed to protect any such tree.
- 40           (2)    To whitewash, paint, or, in any other way, discolor the stem base, bole, or root  
41                 of any tree located within the Town.
- 42           (3)    To fasten or attach any sign, wire, or electrical attachment or other device in  
43                 any manner to any tree located within the Town or to the guard around or  
44                 about any such tree.
- 45           (4)    To, within 3 feet in any direction, close or obstruct any open space around or  
46                 about the base or root of any tree located within the Town or, in any way,  
47                 prevent the access of air, water, or fertilizer to the roots of such tree. The  
48                 attachment of birdhouses or other small ornamental attachments that do not  
49                 substantially threaten the life of a tree is permissible.

50        "Sec. 11.5. Permits; Standards. The following shall apply to permits issued under this Part:

- 1           (1)   The application for a permit shall be on a form provided by the Town and shall  
2           be signed by the property owner.
- 3           (2)   The Town Manager, or his or her designee, shall consider the following  
4           criteria in determining whether a permit shall be issued for the cutting of trees  
5           on public property:
- 6           a.     The condition of the tree with respect to disease, danger of falling,  
7           proximity to existing or proposed structures, and interference with  
8           utility services.
- 9           b.     The need to remove the tree in order to construct proposed  
10           improvements to allow economic development of property adjacent to  
11           public property.
- 12           c.     The topography of land and the effect of the removal of the tree on  
13           erosion, soil retention, and the diversion or increased flow of surface  
14           waters and coordination with the Town's drainage patterns.
- 15           d.     The number of trees on improved property in the neighborhood. The  
16           Town Manager, or his or her designee, shall be guided by the standards  
17           established in the neighborhood and the effect of tree removal on  
18           property values in the area.
- 19           e.     The Town Manager, or his or her designee, may require the relocation  
20           or replacement of a tree as a condition of issuing a permit under this  
21           Part, on a one-for-one basis, with the replacement trees having a  
22           caliper of 1 1/2 inch diameter at breast height, which shall be 4 feet  
23           above the ground at its highest point.
- 24           (3)   The Town Manager, or his or her designee, may issue a permit for the cutting  
25           of a live tree or portions of a live tree, such as limbs or branches, on private  
26           property if the tree is greater than 6 inches in diameter measured 4 feet above  
27           the ground at its highest point if:
- 28           a.     The tree or portion of the tree is within 15 feet of the existing main  
29           structure or a main structure being constructed on a building site.
- 30           b.     The tree or portion of the tree is within 5 feet of an approved septic  
31           tank or septic drain field.
- 32           c.     The tree or portion of the tree is within 5 feet of a driveway or parking  
33           area, the location of which has been approved by the Town Manager  
34           or his or her designee.
- 35           d.     The tree or portion of the tree poses a hazard to the property owner or  
36           other residents.
- 37           e.     The cutting of the tree or portion of the tree promotes the growth and  
38           development of other trees on the lot.
- 39           f.     The tree or portion of the tree is diseased or damaged.
- 40           g.     The tree or portion of the tree is within a temporary service route.  
41           Approval under this sub-subdivision shall include a requirement that  
42           the owner replaces trees on a one-for-one basis as provided in Section  
43           11.6 of this Part.
- 44           h.     The removal of the tree or portion of the tree that does meet the  
45           provisions of sub-subdivisions a. through g. of this subdivision may  
46           be permitted pursuant to a landscaping plan that improves the property  
47           and is acceptable to the Town. The landscaping plan shall be designed  
48           to minimize the injury, disturbance, or removal of any trees that are  
49           not necessary to achieve the specific objectives of the landscaping  
50           plan.

1           i.       For new construction, no tree or portion of the tree shall be cut  
2                   pursuant to the criteria provided in sub-subdivisions a. through c. of  
3                   this subdivision until the owner is ready to begin construction as  
4                   evidenced by the issuance of a building permit.

5           j.       Permits may be issued for trees to be pruned or limbed for view  
6                   enhancement. To attempt to minimize the detriment to the tree of these  
7                   practices, the standards provided in American National Standards  
8                   Institute (ANSI) A300 (Trees, Shrubs, and Other Woody Plant  
9                   Management, Part 1 – Pruning) shall be followed.

10          (4)   A permit shall be valid for 90 calendar days and shall be displayed in plain  
11                   sight on the property where the tree is being cut.

12          (5)   The owner shall clearly flag and take a photo of any tree to be cut or trimmed  
13                   pursuant to the permit prior to the cutting or trimming.

14          (6)   As a condition of issuing a permit, the Town may require the owner to replace  
15                   trees in accordance with Section 11.6 of this Part.

16          "Sec. 11.6. Replacement of Trees. Unless otherwise provided, if the provisions of this Part  
17          require the replacement of a tree, the following shall apply:

18          (1)   Trees shall be of an appropriate species and type for the location and elevation  
19                   in which they will be planted. A list of replacement tree types and the locations  
20                   in which they are appropriate shall be provided by the Town Manager, or his  
21                   or her designee, upon request.

22          (2)   Tree caliper at the time of replanting shall be a minimum of 1 1/2 inches at  
23                   breast height, which shall be 4 feet above the ground at its highest point.

24          (3)   Tree replacement shall be accomplished at the next growing season in  
25                   accordance with American National Standards Institute (ANSI) A300 (Part  
26                   6 - Transplanting).

27          "Sec. 11.7. Clear Cutting Prohibited. Unless approved by the Town Manager, or his or her  
28          designee, and subject to the provisions of sub-subdivisions a. through h. of subdivision (3) of  
29          Section 11.5 of this Part:

30          (1)   Clear cutting is prohibited on lots having a majority of trees less than 6 inches  
31                   in diameter at 4 feet above ground level at its highest point.

32          (2)   More than fifty percent (50%) of the natural vegetation, equally balanced  
33                   across the entire lot, shall not be cut regardless of the size or diameter of the  
34                   vegetation.

35          "Sec. 11.8. Penalties. The following penalties apply in this Part:

36          (1)   The cutting or removal of a tree without a permit as required by Section 11.5  
37                   of this Part shall subject the offender to a civil penalty in the amount of one  
38                   thousand dollars (\$1,000) per tree to be recovered by the Town. Upon appeal,  
39                   the burden of proving that cut trees would have qualified for a permit under  
40                   Section 11.5 of this Part shall lie with the appellant. Upon a finding that the  
41                   cut trees would have qualified for a permit, the offender shall be subject to a  
42                   civil penalty in the amount of one hundred dollars (\$100.00) per tree to be  
43                   recovered by the Town.

44          (2)   The violation of any provision of this Part, except for Section 11.5, shall  
45                   subject the offender to a civil penalty in the amount of one hundred dollars  
46                   (\$100.00) as authorized by Section 11.01 of the Town's Book of Ordinances.  
47                   Each day's continuing violation shall be a separate and distinct violation.

48          (3)   Notwithstanding any other the provisions of this Part, the provisions of this  
49                   section may also be enforced by appropriate equitable remedies issuing from  
50                   a court of competent jurisdiction.

51          (4)   The violation of any provision of this section shall not be a misdemeanor.

1           (5)    For any violator of Section 11.5 of this Part on public property, in addition to  
2           the penalties prescribed in subdivisions (1) through (3) of this section, the  
3           violator shall be required to replace the removed or damaged trees with trees  
4           and/or shrubs of the same size. The violator shall be responsible for the full  
5           replacement cost of the trees.

6           (6)    For any violator of Section 11.5 of this Part on private property, the person  
7           who actually cut or trimmed the tree shall be deemed the responsible party;  
8           provided, however, if the person who cut or trimmed the tree was hired by  
9           another for that purpose, the person who hired or arranged for the cutting or  
10          trimming shall be deemed the responsible party.

11        "Sec. 11.9. Exemptions. This Part shall not apply to any of the following acts:

12          (1)    Tree trimming conducted by the Town or persons acting on behalf of the Town  
13          as part of normal maintenance provided the trimming does not result in the  
14          mutilation, death, or destruction of the tree.

15          (2)    The removal of a tree by the Town or persons acting on behalf of the Town  
16          during a period of emergency or as a result of an act of God to prevent the  
17          hinderance of public work to restore order in the Town.

18          (3)    The removal of a dead tree or dead portions of a tree. The owner of the  
19          property on which the tree is located shall have the burden of proving that the  
20          tree or portion of the tree was dead at the time of removal.

21          (4)    The removal or cutting of live trees or portions of live trees, such as limbs or  
22          branches, on private property provided that the tree or portion of the tree is  
23          less than 6 inches in diameter measured 4 feet above the ground at its highest  
24          point. The owner shall comply with the provisions of this Part regulating clear  
25          cutting.

26        "Sec. 11.10. Appeals. A person found in violation of this Part may appeal the decision as  
27        provided in Section 154.046 of the Town's Book of Ordinances."

28                **SECTION 2.** The establishment of a Tree Board by the Town Council of the Town  
29 of Beech Mountain having the powers and authority provided in Section 1 of this act is hereby  
30 validated. The current serving members of the Tree Board shall continue to serve until the  
31 expiration of their terms. Upon the expiration of each term, the City Council shall appoint a  
32 person to fill the vacancy and that person shall serve for a term of three years as provided in  
33 Section 1 of this act.

34                **SECTION 3.** This act is effective when it becomes law.